

OFFICIAL FILE  
ILLINOIS COMMERCE COMMISSION

ORIGINAL

BEFORE THE

ILLINOIS COMMERCE COMMISSION

CHIEF CLERK'S OFFICE

FEB 4 9 56 AM '00

ILLINOIS  
COMMERCE COMMISSION

GTE NORTH INCORPORATED )  
GTE SOUTH INCORPORATED, and )  
PV TEL )

Joint Petition of GTE North Incorporated, )  
GTE South Incorporated, and PV Tel )  
Pursuant to 47 U.S.C. §§ 252(i) Regarding )  
Adoption of an Interconnection Agreement )

00-0129

JOINT PETITION OF GTE NORTH INCORPORATED,  
GTE SOUTH INCORPORATED, AND PV TEL REGARDING  
ADOPTION OF AN INTERCONNECTION AGREEMENT

COME NOW GTE North Incorporated and GTE South Incorporated (collectively "GTE") and PV Tel, Joint Petitioners, and pursuant to 47 U.S.C. §§ 252(i), petition the Illinois Commerce Commission (the "Commission") regarding the adoption of an interconnection agreement between GTE and PV Tel, on the following grounds:

1. Petitioners GTE North Incorporated and GTE South Incorporated are each a telecommunications carrier within the meaning of Section 13-202 of the Universal Telephone Protection Act of 1985, 220 ILCS 5/12-100, et seq., and each is authorized to provide and is currently providing, intraMSA exchange and interexchange telecommunications services to customers within certain certificated areas of the State of Illinois.

2. Joint Petitioner PV Tel hereby represents that it is an authorized provider of local dial-tone telecommunications service within the State of Illinois.

3. Pursuant to Section 252(i) of the Telecommunications Act of 1996 (the "Act"), PV Tel notified GTE that it desired to adopt the terms (the "Terms") of the

Interconnection Agreement between GTE and AT&T Communications of Illinois, Inc. approved by the Commission in Docket No. 96-AB-005 (the “Agreement”). Subsequent to this, GTE and PV Tel signed a letter relating to PV Tel’s adoption of the Terms, A copy of said letter is attached to this filing as Exhibit 1.

4. Section 252 (i) of the Act provides as follows:

(i) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS.

A local exchange carrier shall make available any interconnection services, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The Commission approved the Agreement pursuant to Section 252(e) of the Act.

Accordingly, per Section 252 (i), PV Tel has the right to adopt the Terms.

5. Subject to the terms of the letter attached as Exhibit 1, there are no outstanding issues between GTE and PV Tel relating to such adoption.

6. As stated in the attached verified Statement in Support of an Adoption of Interconnection Agreement, GTE/PV Tel Exhibit No. 2.00, GTE will continue to make the arrangements set forth in the Agreement available on the same terms and conditions to any duly authorized telecommunications carrier operating within the State of Illinois to the extent required and permitted under Section 252(i) of the Act. Thus, this filing is not discriminatory.

WHEREFORE, GTE and PV Tel respectfully submit this Adoption of an  
Interconnection Agreement.

Respectfully submitted this 3 day of February 1999.

GTE NORTH INCORPORATED  
GTE SOUTH INCORPORATED

By: Tracy D. Pagliara  
Tracy D. Pagliara  
GTE Service Corporation  
600 Hidden Ridge  
HQE03J36  
Irving, TX 75038

Tel. No. (972) 718-6362  
Fax No. (972) 718-1250

PV TEL

By: J. B. K III  
444 E. Center St  
Kingsport, TN 37660

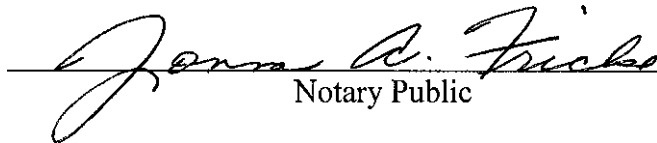
Tel. No. 423-578-1961  
Fax No. 423-578-1966

ATTORNEY FOR GTE NORTH  
INCORPORATED AND GTE SOUTH  
INCORPORATED

## SS VERIFICATION

James H. Hargrave

Subscribed and sworn before me, a notary public for the State of Illinois this 3 day of FEBRUARY 2000.



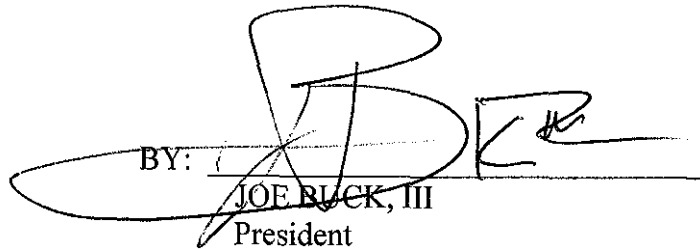
8/18/03

STATE OF TENNESSEE

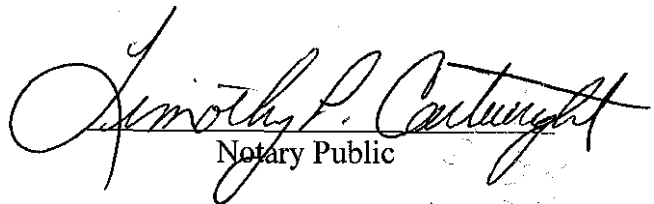
COUNTY OF Sullivan

ss. VERIFICATION

Joe Buck, III being first duly sworn, deposes and states that he is President of PV Tel;  
that he is authorized by PV Tel to make this verification; that he has read the above and  
foregoing Joint Petition Regarding an Adoption of an Interconnection Agreement Among  
GTE North Incorporated, GTE South Incorporated and PV Tel and knows the  
contents thereof; and that said contents are true to the best of his knowledge, information  
and belief

BY:   
JOE BUCK, III  
President

Subscribed and sworn to before me,  
a notary public for the State of  
Tenn this 12<sup>th</sup> day Aug, 1999.

  
Notary Public

My Commission Expires:

4/2/2000 o

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

GTE NORTH INCORPORATED )  
GTE SOUTH INCORPORATED, and )  
PV TEL )  
 )  
 )  
Joint Petition of GTE North Incorporated, )  
GTE South Incorporated, and PV Tel )  
Pursuant to 47 U.S.C. §§ 252(i) Regarding )  
Adoption of an Interconnection Agreement )

STATEMENT IN SUPPORT OF ADOPTION OF AN  
INTERCONNECTION AGREEMENT AMONG GTE NORTH  
INCORPORATED, GTE SOUTH INCORPORATED, AND PV TEL

COME NOW GTE North Incorporated and GTE South Incorporated, Joint  
Petitioners herein, and make the following verified Statement in Support of Adoption of  
an Interconnection Agreement Among GTE North Incorporated, GTE South Incorporated  
and PV Tel.

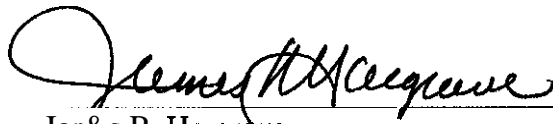
1. Pursuant to Section 252(i) of the Telecommunications Act of 1996 (the  
“Act”), PV Tel notified GTE North Incorporated and GTE South Incorporated  
(collectively, “GTE”) that it desired to adopt the terms (the “Terms”) of the  
Interconnection Agreement between GTE and AT&T Communications of Illinois, Inc.  
approved by the Illinois Commerce Commission (“Commission”) in Docket No. 96-AB-  
005 (the “Agreement”). Subsequent to this, GTE and PV Tel voluntarily signed an  
adoption letter relating to PV Tel’s adoption of the Terms.

2. GTE will continue to make the arrangements set forth in the Agreement  
available on the same terms and conditions to any duly authorized telecommunications

carrier operating territories ~~within~~ the State of Illinois to the extent required and permitted under Section 252(i) of the Act. Thus, this filing is not discriminatory.

WHEREFORE, GTE North Incorporated and GTE South Incorporated respectfully submit the Statement in Support of an Adoption of an Interconnection Agreement among GTE North Incorporated, GTE South Incorporated, and PV Tel.

Respectfully submitted this 3 day of February, 2000.

A handwritten signature in black ink, appearing to read "James R. Hargrave", written over a horizontal line.

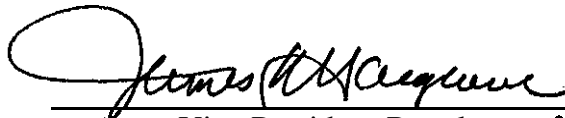
James R. Hargrave  
Assistant Vice President-Regulatory &  
Governmental Affairs

STATE OF ILLINOIS  
COUNTY OF McLEAN

)  
)  
)

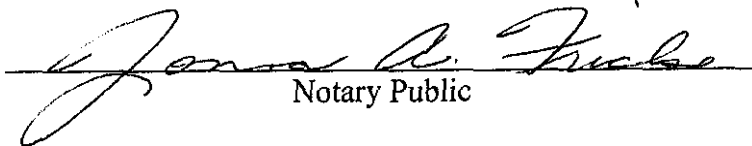
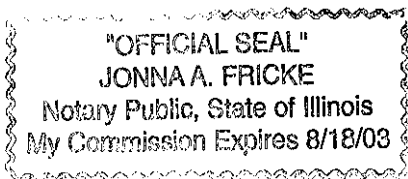
ss VERIFICATION

James R. Hargrave, being first duly sworn, deposes and states that he is the Assistant Vice President – Regulatory & Governmental Affairs for GTE North Incorporated; that he is authorized by GTE North Incorporated and GTE South Incorporated to make this verification; that he has read the above and foregoing Statement in Support of an Adoption of Interconnection Agreement Among GTE North Incorporated, GTE South Incorporated and PV Tel and knows the content thereof; and that said contents are true to the best of his knowledge, information and belief.



Assistant Vice President-Regulatory &  
Governmental Affairs

Subscribed and sworn before me, a notary public for the State of Illinois this  
3 day of February 2000.

  
Notary Public

My commission expires:





Connie Nicholas  
Assistant Vice President  
Wholesale Markets-Interconnection



GTE Network  
Services

HQE03B28  
600 Hidden Ridge  
P.O. Box 152092  
Irving, TX 75038  
9727164586  
FAX 972/719-1523

July 13, 1999

Joe Buck  
PV Tel  
1999 East Stone Drive, Suite 419  
Kingsport, TN 37660

Dear Mr. Buck:

GTE has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996, PV Tel wishes to adopt the terms of the arbitrated Interconnection Agreement between AT&T and GTE that was approved by the Commission as an effective agreement in the State of Illinois in Docket No. 99-AA-001 (Terms)<sup>1</sup>. I understand PV Tel has a copy of the Terms

Please be advised that GTE's position regarding the adoption of the Terms is as follows.

On January 25, 1999, the Supreme Court of the United States ("Court") issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. Specifically, the Supreme Court vacated Rule 51.319 of the FCC's First Report and Order, FCC 96-325, 61 Fed. Reg. 45476 (1996) and modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, No. 97-826, 1999 U.S. LEXIS 903 (1999).

Three aspects of the Courts decision are worth noting. First, the Court upheld on statutory grounds the FCC's jurisdiction to establish rules implementing the pricing provisions of the Act. The Court, though, did not address the substantive validity of the FCC's pricing rules. This issue will be decided by the Eighth Circuit on remand.

---

<sup>1</sup> \*These "agreements" are not agreements in the generally accepted understanding of that term. GTE was required to accept these agreements, which were required to reflect the then-effective FCC rules.

Second, the Court held that the FCC, in requiring ILECs to make available all UNEs, had failed to implement section 251 (d)(2) of the Act, which requires the FCC to apply a "necessary" or "impair" standard in determining the network elements ILECs must unbundle. The Court ruled that the FCC had improperly failed to consider the availability of alternatives outside the ILEC's network and had improperly assumed that a mere increase in cost or decrease in quality would suffice to require that the ILEC provide the UNE. The Court therefore vacated in its entirety the FCC rule setting forth the UNEs that the ILEC is to provide. The FCC must now promulgate new UNE rules that comply with the Act. As a result, any provisions in the Terms requiring GTE to provide UNEs are nullified.

Third, the Court upheld the FCC rule forbidding ILECs from separating elements that are already combined (Rule 315(b)), but explained that its remand of Rule 319 "may render the incumbents' concern on [sham unbundling] academic." In other words, the Court recognized that ILEC concerns over UNE platforms could be mooted if ILECs are not required to provide all network elements: "If the FCC on remand makes fewer network elements unconditionally available through the unbundling requirement, an entrant will no longer be able to lease every component of the network."

The Terms which PV Tel seeks to adopt do not reflect the Courts decision, and any provision in the Terms that is inconsistent with the decision is nullified.

GTE anticipates that after the FCC issues new final rules on UNEs, this matter may be resolved. In the interim, GTE would prefer not to engage in the arduous task of reforming agreements to properly reflect the current status of the law and then to repeat the same process later after the new FCC rules are in place. Without waiving any rights, GTE proposes that the parties agree to hold off amending (or incorporating the impact of the decision into) the Terms and let the section 252(i) adoption proceed by maintaining the status quo until final new FCC rules are implemented (the "New Rules"), subject to the following package of interdependent terms:

1. GTE will continue to provide all UNEs called for under the Terms until the FCC issues the New Rules even though it is not legally obligated to do so.
2. Likewise, PV Tel agrees not to seek UNE "platforms," or "already bundled" combinations of UNEs.
3. If the FCC does not issue New Rules prior to the expiration of the initial term of the Terms, GTE will agree to extend any *new* interconnection arrangement between the parties to the terms of this proposal until the FCC issues its New Rules.

4. By making this proposal (and by agreeing to any settlement or contract modifications that reflect this proposal), GTE does not waive any of its rights, including its rights to seek recovery of its actual costs and a sufficient, explicit universal service fund. Nor does GTE waive its position that, under the Courts decision, it is not required to provide UNEs unconditionally. Moreover, GTE does not agree that the UNE rates set forth in any agreement are just and reasonable and in accordance with the requirements of sections 251 and 252 of Title 47 of the United States Code.
5. The provisions of the contract that might be interpreted to require reciprocal compensation or payment as local traffic from GTE to the CLEC for the delivery of traffic to the Internet are not available for adoption and are not a part of the 252(i) agreement pursuant to FCC Rule 809 and paragraphs 1317 and 1318 of the First Report and Order.

GTE believes that the first four conditions above are adequately explained by the first part of this letter. The reason for the last condition is the FCC gave the ILECs the ability to except 252(i) adoptions in those instances where the cost of providing the service to the requesting carrier is higher than that incurred to serve the initial carrier or there is a technical incompatibility issue. The issue of reciprocal compensation for traffic destined for the Internet falls within FCC Rule 809. GTE never intended for Internet traffic passing through a CLEC to be included within the definition of local traffic and the corresponding obligation of reciprocal compensation. Despite the foregoing, some forums have interpreted the issue to require reciprocal compensation to be paid. This produces the situation where the cost of providing the service is not cost based under Rule 809 or paragraph 1318 of the First report and Order. As a result, that portion of the contract pertaining to reciprocal compensation is not available under this 252(i) adoption. In its place are provisions that exclude ISP Traffic from reciprocal compensation. Specifically, the definition of "Local Traffic" includes this provision: "Local Traffic excludes information service provider ("ISP") traffic (i.e., Internet, 900 – 976, etc)"

In sum, GTE believes its proposal as described above would maintain the status quo until the legal landscape is settled.

PV Tel's adoption of the AT&T arbitrated Terms shall become effective upon filing of this letter with the Illinois Commerce Commission and remain in effect no longer than the date the AT&T arbitrated Terms are terminated. The AT&T arbitrated agreement is currently scheduled to expire on June 28, 2002.

Joe Buck  
July 13, 1999  
Page 4

As these Terms are being adopted by PV Tel pursuant to statutory rights under section 252(i), GTE does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by GTE of the Terms does not in any way constitute a waiver by GTE of its position as to the illegality or unreasonableness of the Terms or a portion thereof, nor does it constitute a waiver by GTE of all rights and remedies it may have to seek review of the Terms, or to petition the Commission, other administrative body, or court for reconsideration or reversal of any determination made by the Commission pursuant to arbitration in Docket No. 99-AA-001, or to seek review in any way of any provisions included in these Terms as a result of PV Tel's 252(i) election.

Nothing herein shall be construed as or is intended to be a concession or admission by either GTE or PV Tel that any contractual provision required by the Commission in Docket No. 99-AA-001 (the AT&T arbitration) or any provision in the Terms complies with the rights and duties imposed by the Telecommunications Act of 1996, the decision of the FCC and the Commissions, the decisions of the courts, or other law, and both GTE and PV Tel expressly reserve their full right to assert and pursue claims arising from or related to the Terms. GTE contends that certain provisions of the Terms may be void or unenforceable as a result of the Courts decision of January 25, 1999 and the remand of the pricing rules to the United States Eighth Circuit Court of Appeals.

Should PV Tel attempt to apply such conflicting provisions, GTE reserves its rights to seek appropriate legal and/or equitable relief. Should any provision of the Terms be modified, such modification would likewise automatically apply to this 252(i) adoption

Please indicate by your countersignature on this letter your understanding of and commitment to the following three points only:

- (A) PV Tel adopts the Terms of the AT&T arbitrated agreement for interconnection with GTE and in applying the Terms, agrees that PV Tel be substituted in place of AT&T in the Terms wherever appropriate.
- (B) PV Tel requests that notice to PV Tel as may be required under the Terms shall be provided as follows:

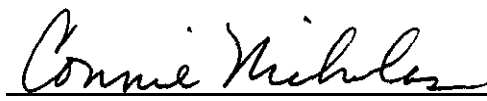
Joe Buck  
July 13, 1999  
Page 5

To : PV Tel  
Attention: Joe Buck  
1999 East Stone Drive, Suite 419  
Kingsport, TN 37660  
Telephone number: 423/578-1961

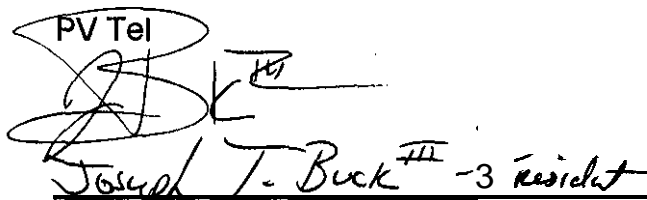
- (C) PV Tel represents and warrants that it is a certified provider of local **dialtone** service in the State of Illinois, and that its adoption of the Terms will cover services in the State of Illinois only.

Sincerely,

GTE North Incorporated  
GTE South Incorporated

  
Connie Nicholas  
Assistant Vice President  
Wholesale Markets-Interconnection

Reviewed and countersigned as to points A, B, and C only:

  
For PV Tel

- c: A. Lowery - NC999142 - Durham, NC  
D. Robinson - HQE03B73 - Irving, TX